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RICHARD H. WHEELER  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 JOHN L. WHEELER  
2 GLORIA A. WHEELER  
3 181 Hunter Avenue  
4 Oakland, CA 94603  
5 (510) 635-6903

6 Plaintiffs In Propria Persona

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 JOHN L. WHEELER, GLORIA A.  
12 WHEELER,

13 Plaintiffs,

14 vs.

15 BANK OF AMERICA, N.T. & S.A. a  
16 California corporation, and  
17 LIBERTY REVERSE MORTGAGE and  
18 SEATTLE FINANCIAL GROUP, and  
19 DOES 1-10, inclusive,

20 Defendants.

No. C08-03230 JL

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANT BANK OF AMERICA'S  
MOTION TO STAY PROCEEDINGS**

Date: September 25, 2008

Time: 2:30 p.m.

Place: 450 Golden Gate Ave.  
San Francisco, CA  
Dept. 6, 17th Fl.

Trial Date: None

Complaint Filed: July 3, 2008

Judge: Hon. Vaughn R. Walker

21 **INTRODUCTION**

22 Plaintiffs' cause of action 704080 is against Bank of  
23 America for insufficient funds.

24 In is answer to the complaint, Bank of America admits that  
25 California Code of Civil Procedure §704.080 sets forth the  
26 exemptions applicable to levies by judgment creditors upon  
27 deposit accounts into which Social Security funds are directly  
28 deposited.

MEMORANDUM OF POINTS AND AUTHORITIES  
IN OPPOSITION TO DEFENDANT BANK OF  
AMERICA'S MOTION TO STAY PROCEEDINGS

1 California Code of Civil Procedure §704.080 provides that  
2 Social Security payments that are directly deposited by the U.S.  
3 government into a bank account are exempt from levy, regardless  
4 of the amount of the deposit. The statute further establishes  
5 that Social Security Direct Deposit accounts are exempt from  
6 levy, without the consumer having to make a claim of exemption,  
7 for amounts up to \$2,000 for a single depositor account and for  
8 amounts up to \$3,000 for an account with two or more depositors.

9 California Code of Civil Procedure §704.080(d) also  
10 specifically requires a financial institution that holds a Social  
11 Security Direct Deposit account to follow certain procedures when  
12 processing a levy such that no exempt funds are seized.

13 Defendant Bank of America has engaged and in continuing to  
14 engage in a business practice of unlawfully debiting accounts of  
15 Social Security Direct Deposit account holders for amounts sought  
16 through levy by alleged creditors including, without limitation,  
17 defendant Bank of America and assessing service fees for the  
18 processing of such levies. Such practices violate California  
19 Code of Civil Procedure §704.080 in that Social Security Direct  
20 Deposit funds are exempt from levy.

21 Defendants' violation of California Code of Civil Procedure  
22 §704.080 constitutes a tort in that it is a breach of a non-  
23 consensual duty owed to another. California Code of Civil  
24 Procedure §704.080 was enacted for the protection of plaintiffs  
25 and embodies a public policy that Social Security Direct Deposit  
26 accounts shall not be subject to levy. Accordingly, defendants'

1 violation of said statute constitutes a tort and defendants are  
2 therefore liable for all damages suffered by plaintiffs.

3 This is against Bank of America because plaintiffs paid  
4 defendant a cashier check No. 412925025 on November 8, 2005.

5 This is against Bank of America and Liberty Reverse  
6 Mortgage, Seattle Mortgage. On 6/22/06, Liberty Reverse  
7 Mortgage, Bank of America, Seattle Mortgage settlement statement  
8 total disbursements to plaintiffs \$38,406.53. Equal  
9 disbursements to borrower \$35,914.71, loan amount \$191,578.83,  
10 total settlement charges \$17,257.59. Defendant charged  
11 plaintiffs mortgage insurance premium for SMC/FHA \$7,255.80 up  
12 front.

13 On Reverse Mortgage statement, each statement they are  
14 charging plaintiffs for FHA Mortgage Insurance which has already  
15 been paid up front. Reverse Mortgage account statement Seattle  
16 Savings Bank Loan number 4393069. Bank of America charged  
17 plaintiffs for FHA Mortgage Insurance each month for 11/30/07  
18 \$96.84. This money was taken out up front.

19 On 6/22/06 \$7,255.80 was taken out for FHA Mortgage  
20 Insurance. Also charged plaintiffs \$903.00 for title insurance.  
21 ON 12/19/05 defendant Bank of America charged plaintiffs account  
22 \$1,260.00. Plaintiff John Wheeler did not get this money out of  
23 the bank and he did not sign for that money.

24 On 6/16/06, defendant Bank of America charged plaintiffs'  
25 account \$100.00. Plaintiff John Wheeler did not sign for that  
26 money.

1 Plaintiffs' case is not like Paul Miller and Scott Anderson  
2 because defendant Bank of America took money from plaintiffs.  
3 Plaintiff John Wheeler will exhibit this in his declaration.

4 **DEFAMATION**

5 Bank of America defamed plaintiffs by failing to remove the  
6 negative entries on plaintiffs' credit reports and, upon  
7 information and belief, by declaring to potential creditors of  
8 plaintiffs and plaintiffs still owed money to Bank of America  
9 regarding the \$148.53. Plaintiffs paid Bank of America with a  
10 Bank of America cashier check dated November 8, 2005. Defendants  
11 sold this account to asset Acceptance, LLC Collection Agency.

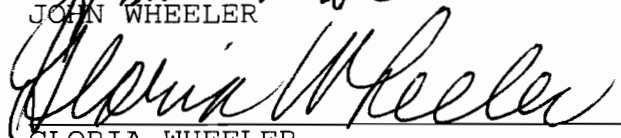
12 The current balance is \$543.34 that plaintiffs owe.  
13 defendant Bank of America reported to Chex Systems that  
14 plaintiffs were writing bad checks on insufficient funds.  
15 Plaintiffs went to open up an account with Bank of the West on  
16 4/9/04, November 8, 2005, and they refused to open plaintiffs a  
17 checking account. Bank of the West said plaintiffs were writing  
18 bad checks on insufficient funds.

19 Plaintiffs will be prejudiced by a stay in this action.

20  
21 WHEREFORE, plaintiffs request that this court exercise its  
22 authority to not stay this action until the appellate review of  
23 Miller before the California Supreme Court is completed.

24 Dated: , 2008

25   
26 JOHN WHEELER

27   
28 GLORIA WHEELER

PROOF OF SERVICE

The undersigned states:

I am a citizen of the United States and I am employed in the County of Alameda, State of California; I am over the age of 18 years and not a party to the within action; my business address is 405 14th Street, Suite 217, Oakland, California.

On the date shown below, I served a true copy of:

**DECLARATION OF JOHN L. WHEELER IN OPPOSITION TO DEFENDANT BANK OF AMERICA'S MOTION TO STAY PROCEEDINGS**

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT BANK OF AMERICA'S MOTION TO STAY PROCEEDINGS**

on the interested parties shown below in said action, by placing a true copy thereof enclosed in a sealed envelope, with first class postage fully prepaid thereon, in the United States mail at Oakland, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Oakland, California on September 3, 2008.

  
JUDITH LYONS

Debra S. Belaga, Esq.  
Aaron M. Rofkahr, Esq.  
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275 Battery Street  
San Francisco, CA 94111-3305